



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

TCS MATERIALS, INC.

Registration No. VAG110035

Registration No. VAG110059

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and TCS Materials, Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.

6. “Regulation” means 9 VAC 25-193-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Ready-Mixed Concrete Plants.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Permit” means VPDES General Permit for Ready-Mixed Concrete Plants No. VAG11, which became effective on October 1, 2003 and expires on September 30, 2008.

SECTION C: Finding of Facts and Conclusions of Law

1. TCS Materials, Inc. (“TCS”) owns and operates ready-mixed concrete plants located at 4606 Bainbridge Blvd, Chesapeake (“Gilmerton facility”), and 207 Parker Lane, Virginia Beach (“London Bridge facility”). TCS is subject to the Permit through Registration No. VAG110035 for the Gilmerton facility, and Registration No. VAG110059 for the London Bridge facility, which were each issued October 9, 2003, and expire when the Permit expires.
2. The Permit authorizes TCS to discharge process wastewater via outfall 001 and storm water associated with industrial activities via outfalls 002, 003, 004, 005 and 006 at the Gilmerton facility, and process wastewater via outfall 001 and storm water associated with industrial activities via outfalls 002 and 003 at the London Bridge facility. TCS is required to sample and monitor discharges at outfall 001 at the Gilmerton and London Bridge facilities on a monthly basis and submit to DEQ discharge monitoring reports no later than the tenth day of each month. DEQ records indicate that the monthly reporting requirements for outfall 001 for both facilities were met. In addition to the monthly reporting requirements, the Permit requires TCS to sample storm water discharges annually at each storm water outfall and submit to DEQ reports of annual storm event monitoring (“annual report”) by the tenth day of January of the following year.
3. On or about January 10, 2005, DEQ compliance staff conducted a review of agency files and determined that DEQ did not receive the annual report from TCS for outfalls 002, 003, 004, 005 and 006 at the Gilmerton facility and for outfalls 002 and 003 at the London Bridge facility for the 2004 reporting period.
4. On February 16, 2005, DEQ issued warning letter No. W2005-02-T-1003 (Gilmerton facility) and warning letter No. W2005-02-T-1004 (London Bridge facility) to TCS notifying TCS that the annual reports for outfalls 002, 003, 004, 005 and 006 at the Gilmerton facility and outfalls 002 and 003 at the London Bridge facility were not received by DEQ for the 2004 reporting period. Additionally, the referenced warning letters requested that TCS submit the annual reports for each of the storm water outfalls at Gilmerton and London Bridge facilities for the 2004 reporting period to DEQ by May 1, 2005. By letter dated

February 22, 2005, TCS responded to DEQ regarding the referenced warning letters, stating that the annual reports for the Gilmerton and London Bridge facilities for the 2004 monitoring period would be completed as soon as possible. DEQ did not receive the referenced annual reports from TCS for either the Gilmerton or London Bridge facilities.

5. On April 6, 2005, during a routine inspection of the London Bridge facility, DEQ compliance staff informed TCS that DEQ did not receive the annual reports for outfalls 002 and 003. Compliance staff advised TCS to collect samples from each of its storm water outfalls and submit the annual reports to DEQ. DEQ did not receive the referenced annual reports from TCS for either the Gilmerton or London Bridge facilities.
6. Part I.A.3 of the Permit requires TCS to sample and monitor storm water discharges at each of its storm water outfalls. Part I.A.5 of the Permit requires TCS to submit to DEQ annual reports for each of its storm water outfalls no later than the tenth day of January each year. TCS violated the Permit by failing to sample, monitor and submit to DEQ an annual report of storm water discharges for outfalls 002, 003, 004, 005 and 006 at the Gilmerton facility and for outfalls 002 and 003 at the London Bridge facility for the 2004 reporting period.
7. On August 9, 2005, DEQ issued Notice of Violation ("NOV") No. W2005-07-T-0003 to TCS regarding the Gilmerton facility and NOV No. W2005-07-T-0004 to TCS regarding the London Bridge facility, advising TCS of the outstanding annual reports for outfalls 002 through 006 for the Gilmerton facility and outstanding annual report for outfalls 002 and 003 for the London Bridge facility and applicable regulatory requirements. On August 18, 2005, TCS responded to the NOV indicating that it was in the process of collecting the data for the annual reports for both facilities. DEQ did not receive the outstanding annual reports from TCS for either the Gilmerton or London Bridge facilities. Information regarding discharge quality at both facilities would need to be obtained from the 2005 annual report which is due by January 10, 2006.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d), orders TCS, and TCS agrees to comply with the Permit. In addition, the Board orders TCS, and TCS voluntarily agrees to pay a civil charge of \$7,000 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include TCS's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of TCS, for good cause shown by TCS, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notices of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, TCS admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. TCS consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. TCS declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by TCS to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. TCS shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. TCS shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. TCS shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which TCS intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and TCS. Notwithstanding the foregoing, TCS agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to TCS. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve TCS from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, TCS voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of March, 2006.

Francis L. Daniel
Francis L. Daniel, Tidewater Regional Director
for ~~Robert G. Burnley~~, Director
Department of Environmental Quality

for DAVID M. PAYLOR

TCS Materials, Inc. voluntarily agrees to the issuance of this Order.

By: [Signature]
Date: 12-2-05

Commonwealth of Virginia
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 2 day of

December, 2005, by [Signature], who is
(name)

President
(title) of TCS Materials, Inc., on behalf of TCS.

Laura Kramer
Notary Public

My commission expires: April 30, 2009.